

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. LAWRENCE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Cheyenne, Wyo.

*Docket No. 96-2413; Submitted on the Record;
Issued August 13, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a medical condition causally related to factors of federal employment.

Appellant initially filed a claim for compensation for an August 5, 1993 incident which the Office of Workers' Compensation Programs accepted as low back strain-resolved. However, the Office, in a decision dated January 6, 1995, denying appellant's claim for recurrence of disability based on the employment injury, recommended that appellant file an occupational disease claim because the medical condition which she alleged was a recurrence of her August 10, 1993 employment injury may have been related "to employment factors over a period of time."¹

Thereupon appellant filed the present claim for compensation on April 19, 1995 alleging that she had become aware that her low back strain was aggravated by factors of federal employment on December 7, 1994.²

In support of her claim, appellant submitted a December 14, 1994 narrative which she had submitted in support of her recurrence of disability claim. The Office received the report on May 4, 1995. Appellant stated that she returned to work on January 23, 1994 after an employment injury and was assigned to a position which required carrying "approximately 10 to 15 pounds of equipment and case work to various work sites" so she could "have adequate room for work." She stated that this activity resulted in a gradual increase in back pain and discomfort; that in November 1994 she was required to carry "even larger amounts of materials to different work space(s)"; that in December 1994 she had difficulty sleeping due to back pain; and that on December 6, 1994 she "spent most of her day carrying volumes of materials down to the second floor library to review and file." She noted that she was in fair health until

¹ Appellant then appealed that decision to the Board which the Director of the Office subsequently addressed in a motion to remand for further development of the medical evidence. The Board, in an order dated August 2, 1996, granted the Director's motion to remand. (Docket No. 95-1895).

² Appellant was a 44-year-old examination program coordinator at the time of her April 1995 claim.

December 7, 1994 when she believed she sustained a “reinjury to the August 1993 trauma since it is the same disc, L-4 and L-5.”

Appellant also submitted a medical report dated January 31, 1995 and received by the Office on May 4, 1995 from Dr. George J. Guidry, Board-certified in neurological surgery, who stated that he had reviewed appellant’s medical records pertaining to her August 1993 employment injury and had examined her on January 17, 1995 based on her complaints of recent left leg pain. He opined that appellant’s left leg condition was causally related to the August 1993 employment injury.

On June 13, 1995 the Office notified appellant that she would need to submit additional medical evidence to support her claim for compensation. The Office required appellant to submit a comprehensive medical report from her treating physician including a rationalized medical opinion on what caused her condition. Specifically, the Office required appellant’s treating physician, if appropriate, to submit an explanation as to what specific work factors or incidents in her federal employment contributed to her condition.

On that same day the employing establishment notified the Office that appellant was assigned to the position as an examination program coordinator which did not require “unusual physical effort.”

On October 5, 1995 the Office advised appellant that it had not received the information it required in its June 13, 1995 notice and that it would keep the record open for 20 days from the date of the letter for appellant to submit the information required to process her claim.

Appellant then submitted a duty status report from Dr. Mark R. Rangitsch, an orthopedic surgeon, dated January 10, 1995 and received by the Office on October 16, 1995. In his report Dr. Rangitsch stated that appellant reported that she had injured her back over a year and a half earlier causing a herniated disc and “recurrent symptoms.” He checked “yes” in a box indicating that he believed that appellant’s current medical condition was caused or aggravated by employment activity and noted that appellant was totally disabled from December 8, 1994 through the January 10, 1995.³

On October 30, 1995 the Office, in a decision, denied appellant’s claim for compensation benefits on the grounds that the evidence of record failed to establish that her claimed medical condition was causally related to work factors occurring prior to December 7, 1994.

In a letter received by the Office on November 14, 1995, appellant requested an oral hearing on the Office’s October 30, 1995 decision denying benefits. A hearing was held on May 9, 1996 in Denver, Colorado. The hearing representative stated that the issue in the case was whether appellant’s back condition was aggravated by “work activities she had been performing since January 23, 1994.” Appellant then testified that she had had two MRI scans which revealed problems at L5-S1 and that the later scan revealed that the disc “directly above [L5-S1] was showing dehydration and some problems.” The hearing representative noted that

³ Dr. Rangitsch noted in his report that he had ordered a magnetic resonance imaging (MRI) scan which appellant referred to in a January 22, 1995 letter to Dr. Guidry. However, Dr. Guidry did not address the MRI results in his January 31, 1995 reply to appellant.

the case record did not contain records regarding the MRI scan results. Appellant agreed to attempt to submit them for the record within 30 days of the close of the hearing but failed to do so. Appellant further testified that she returned to work in either February or March 1995 after she left on December 7, 1994 but that the office had been reorganized “so that I no longer had to carry the material or file on the floor.” Appellant noted intermittent sick leave for medical treatment subsequent to her return to the workplace.⁴

On June 17, 1996 the Office hearing representative issued a decision, finalized on that date, in which she denied appellant’s claim on the grounds that she had not submitted medical evidence to support her claim that the described employment factors caused or aggravated the back condition which caused her to stop work in December 1994.⁵

The Board finds that appellant has not met her burden of establishing that she sustained an occupational illness in the performance of duty of her federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act⁶ has the burden of establishing the essential elements of his or her claim,⁷ that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁸ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

In the present case, appellant has failed to present reliable, probative and substantial evidence that her lower back pain was caused or aggravated by the specific employment incidents and factors which she alleged. Dr. Guidry, appellant’s treating physician and Board-certified in neurological surgery, failed to provide a rationalized medical opinion that appellant’s employment incidents and factors caused her left leg pain. All he opined was that appellant’s December 7, 1994 condition was causally related to her accepted employment injury. Dr. Guidry made no reference to the kind of work appellant performed between January and December 1994, or whether lifting files and equipment as appellant alleged she had during that time frame would have caused her left leg pain. Further, Dr. Rangitsch, Board-certified in orthopedic surgery, who found that appellant had sustained a herniated disc at L5-S1, failed to submit a rationalized medical opinion which would have established a causal relationship between appellant’s employment factors and her claimed medical condition. Although Dr.

⁴ In its March 22, 1995 decision, denying appellant’s request for reconsideration of her claim for recurrence of disability, the Office referred to a September 23, 1993 MRI scan of the lumbar spine revealing a herniation at L5-S1.

⁵ The work factors included carrying 10 to 15 pound files and equipment from January to November 1994 to different work areas in the building in order to find adequate work space. Based on a special project commencing in November, appellant was required to carry “even larger amounts of materials to different work space[s].”

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁸ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁹ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Rangitsch checked a box “yes” indicating that he believed that appellant’s current medical condition was caused or aggravated by employment activity, the Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s disability was caused or aggravated by employment activity is of diminished probative value. Without any explanation or rationale drawing on appellant’s employment factors of lifting files and equipment for a 12-month period to support the conclusion reached, such report is insufficient to establish causal relationship.¹⁰ Furthermore, Dr. Rangitsch indicated that his opinion on causal relationship was based on appellant’s allegations. An award of compensation may not be based on surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between his condition and his employment. To establish causal relationship, appellant must submit a physician’s report in which the physician reviews the factors of employment identified by appellant as causing her condition and, takes these factors into consideration as well as findings upon examination of appellant and appellant’s medical history, states whether these employment factors caused or aggravated appellant’s diagnosed conditions and presents medical rationale in support of his opinion. Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.¹¹

The October 30, 1995 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹¹ *Donald W. Long*, 41 ECAB 142, 146-47 (1989).